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Ada Shen-Jaffe, Director

March 12, 2003

Ms. Carol Sureau  
Deputy Commissioner for Legal Affairs  
Office the Insurance Commissioner  
PO Box 40255  
Olympia, WA 98504-0255

Re: Docket # G02-45

Dear Ms. Sureau:

The Intervener Groups write in response to Premera's March 6, 2003 letter describing its proposal regarding the use of a Special Master. The Intervener Groups do not object to Premera's proposal to bear the costs of the Special Master under all circumstances. The Intervener Groups, however, do object to Premera's proposal that the Special Master be authorized to award the prevailing party in a discovery dispute its "fees and costs" if the Special Master finds that the position of the opposing party is "lacking in substantial merit."<sup>1</sup>

The Intervener Groups do not believe that a Special Master can be authorized to award fees and costs to a prevailing party in a discovery dispute related to an administrative proceeding under the Holding Company Act. The mere adoption of the rules for superior court as the rules of procedure does not authorize a special master or the Insurance Commissioner to make a monetary award that is not otherwise authorized by statute. Moreover, rather than increasing efficiency, the lengthy hearing process for awarding fees and costs described in Premera's proposal seems likely to generate extensive additional litigation on matters that are truly tangential to the issues before the Commissioner.

The Intervener Groups have acted expeditiously and efficiently throughout this proceeding, and they intend to pursue discovery in a similarly efficient and appropriate manner. The establishment of sanctions for abuse of discovery procedures is simply not necessary at this juncture. Therefore, the Intervener Groups submit that the Insurance Commissioner is the only person who should address any issue of sanctions for discovery abuse if and when the Commissioner finds that a party in this matter has engaged in sanctionable conduct related to this proceeding.

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<sup>1</sup> We assume that Premera does not intend to include the costs of the Special Master, or other costs beyond attorneys' fees and closely associated costs such as copying, in the "fees and costs" it proposes to authorize the Special Master to impose.

Ms. Carol Sureau  
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Sincerely yours,

Ele Hamburger  
Lead Attorney for  
Premera Watch Coalition

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